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IN THE

Supreme Court of the United States

October Term 1947

No. 563

SIKORA REALTY CORPORATION,

Petitioner,

against

TIGHE E. WOODS, Housing Expediter, as Successor to the Price Administrator,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND SUPPORTING BRIEF

AGNES SIKORA GILLIGAN,
Counsel for Petitioner.

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TO THE HONORABLE FRED M. VINSON, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Sikora Realty Corporation respectfully shows to this Court:

Statement of the Matter Involved

The petitioner, a New York corporation, is the owner of an apartment house in Astoria, Queens County, City and State of New York, and Joseph McGale has been a tenant in Apartment 5E of that house since August 1st, 1942. Rentals for residental dwelling purposes were regulated

for the New York City area as of the rents payable on March 1st, 1943. The rental charged for the apartment on March 1st, 1943 was $35. The landlord has owned the house since the time of its construction in 1924 (R. 1 seq).

On July 31st, 1946 an order was made by the Area Rent Director determining that the rent should be adjusted on the grounds stated in § 5(c)3 of the Rent Regulations and ordering that the maximum rent be reduced from $35 to $32 per month (R. 123-16) § 5(c)3 of the Rent Regulations authorized the Area Rent Director to reduce the maximum allowable rent if "There has been a decrease in the minimum services, furniture, furnishings or equipment * * * " (9 F. R. 14991).

Petitioner claimed the order of the Area Rent Director was unlawful because: (1) the complaint on which it was issued did not comply with the requirements of the regulations; (2) if a new complaint was filed a copy was never served upon the petitioner; (3) the petitioner was afforded no means or opportunity to test the sufficiency of the complaint; (4) the petitioner was required at its peril to present evidence that should have been presented by the tenant; (5) the order failed to indicate which of the several grounds for reducing a maximum rental stated in § 5(c)3 was the basis for making the order; (6) the order contained no finding of fact to justify the exercise of the Area Rent Director's authority; (7) the amount of the reduction did not conform to the requirements of the regulations; (8) the amount of the reduction was arbitrary and unreasonable; and (9) the reduction was resorted to as a means of penalizing petitioner (R. 2 seq).

The basic question presented was whether a landlord in repainting an occupied apartment must bear the expense of moving the tenant's furniture and protecting it from damage when it was contrary to the landlord's custom to furnish such service on the date as of which maximum

rents were determined (R. 5). The New York Supreme Court for Queens County has held that such an obligation is not imposed upon a landlord by the New York Multiple Dwelling Law (*Ben-Su-Si Realty Corp.* v. *Wagner, et al.* (1947), 72 N. Y. S. 2d 765).

An application for review was thereupon made to the Regional Administrator who denied the application on November 5th, 1946, and pretended to affirm the order of the Area Rent Director, dated July 31, 1946 (R. 44).

On February 3rd, 1947, the Landlord filed a protest against these orders with the Office of Temporary Controls, as successor to the Office of Price Administrator. Accompanying the protest was a brief setting forth petitioner's argument. In May 1947 the functions of the Office of Price Administration as transferred to the Office of Temporary Controls, so far as they related to the regulation of rent, were transferred to the Housing Expediter (R. 1-10).

On October 29th, 1947, the Office of Housing Expediter entered an order denying the protest (R. 16, 410).

A timely complaint was thereafter filed with the Emergency Court of Appeals seeking a review of the orders made by the Area Rent Director, the Regional Administrator and the Housing Expediter on numerous grounds especially that the orders were unconstitutional (R. 14).

Instead of answering petitioner's complaint the Housing Expediter moved to dismiss on the ground that the Emergency Court of Appeals lacked jurisdiction of the issues raised. The Court entered an order on January 2nd, 1948, granting such motion and dismissing the complaint. The Court wrote no opinion explaining its reason for doing so (R. 7).

Petitioner claims that under the provisions of § 1(b) of the Emergency Price Control Act of 1942 as amended, the Emergency Court of Appeals had jurisdiction to pass upon

the issues, and to hold otherwise means that the Housing and Rent Act of 1947 is unconstitutional to the extent that it fixes maximum rents at the rents which were in effect on June 30th, 1947.

JURISDICTIONAL STATEMENT

Jurisdiction of the Court is derived from § 204(d) and § 1(b) of the Emergency Price Control Act of 1942 as amended and § 240 of the Judicial Code as amended (28 U. S. Code § 347).

The Questions Presented

1. The question presented is whether the Emergency Court of Appeals has jurisdiction to review an order made by an Area Rent Director under date of July 31st, 1946, for which a timely application for review was filed with the Regional Administrator who denied the application by order dated November 5th, 1946, as to which order a timely protest was duly filed on February 3rd, 1947, with the Office of Temporary Controls as successor to the Office of Price Administration, which protest was not acted upon by the Housing Expediter as successor to the Office of Temporary Controls until October 29th, 1947.

2. Whether the non-existence of such jurisdiction (if it does not exist), thereby renders the provisions of the Housing and Rent Act of 1947, unconstitutional so far as it purports to fix the rentals in effect for Apartment 5E in petitioner's building on June 30th, 1947, as the maximum rent that may be collected.

3. Whether if the Emergency Court of Appeals lacks jurisdiction to determine what the maximum rent of petitioner's apartment 5E should have been on June 30th, 1947, the rental of the said apartment has been released from the control of the Housing and Rent Act of 1947.

Reasons for the Allowance of the Writ

1. The Emergency Court of Appeals has decided an important question of Federal law which has not been, but should be settled by this Court.

2. The Emergency Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to require a review by this Court.

3. The Emergency Court of Appeals has decided a question of substance relating to the Constitution and a statute of the United States which has not been but should be settled by this Court.

4. This Court now has before it cognate questions concerning the applicability of § 1(b) of the Emergency Price Control Act of 1942 as amended (*Fleming* v. *Hill*, Docket No. 437) and the constitutionality of the Housing and Rent Act of 1947 (*Woods* v. *Miller*, Docket No. 486).

5. The case at bar raises serious questions as to the entire pattern of bureaucratic administration under a statute which purports to circumvent the safeguards contained in the Code of Administrative Procedure.

6. Under the decision of the Emergency Court of Appeals petitioner will be deprived of any opportunity to obtain a judicial review of the administrative orders involved.

WHEREFORE, your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Emergency Court of Appeals, commanding the said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Emergency Court of Appeals had in the case numbered

and entitled in its Docket No. 453, *Sikora Realty Corporation* v. *Woods, Housing Expediter*, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the order herein of the said Emergency Court of Appeals be reversed by this Court and for such further or different relief as to this Court may seem proper.

Dated, Astoria, New York, January 28, 1948.

AGNES SIKORA GILLIGAN,
Counsel for Sikora Realty Corporation.

In The

Supreme Court of the United States

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Tighe E. Woods, Housing Expediter, as Successor to the Price Administrator,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinion of the Court Below

Court below rendered no opinion.

Jurisdiction

Reference is made to the jurisdictional statement in the petition (p. 4).

Statement of the Case

Reference is made to the "statement of the matter involved" in the petition (p. 1).

Specification of Errors

1. The Emergency Court of Appeals, erred in dismissing the complaint on the ground that the Court lacked jurisdiction.

2. The Emergency Court of Appeals erred in failing to hold that under § 1(b) of the Emergency Price Control Act of 1942 as amended, prior to June 30th, 1947, petitioner acquired a right to obtain a determination whether an order made by an Area Rent Director on July 31st, 1946, was a valid and proper order, and such right being in existence on June 30th, 1947, was sufficient to sustain a suit in the Emergency Court of Appeals for the purpose of challenging the legality and propriety of such order.

3. The Emergency Court of Appeals erred in failing to hold that by reason of the order of the Area Rent Director made July 31st, 1946, petitioner had been subjected to the liability of accepting less rent than was lawful or of becoming subject to serious penalties and the liability so incurred being in effect on June 30th, 1947, was sufficient to sustain a suit in the Emergency Court of Appeals for the purpose of challenging the legality and propriety of such order.

4. The Emergency Court of Appeals erred in failing to hold that unless it had jurisdiction to review an order of an Area Rent Director dated July 31st, 1946, reducing a maximum rental, which order did not become final until affirmed by the Housing Expediter subsequent to June 30th, 1947, such lack of jurisdiction rendered unconstitutional the provisions of Section 204 (b) of The Housing and Rent Act of 1947 fixing the maximum rentals as those "established under the authority of the Emergency Price Control Act of 1942 as amended, and in effect with respect thereto on June 30th, 1947."

5. The Emergency Court of Appeals erred in failing to hold that unless rentals fixed as maximum rentals under Section 204 (b) of the Housing and Rent Act of 1947, had become final on June 30th, 1947, such provision of Sec. 204 (b) was unconstitutional in the absence of a provision for having the amount of such maximum rentals finally determined.

6. The Emergency Court of Appeals erred in failing to hold that the Office of Temporary Controls and its successor The Housing Expediter having failed to act on petitioner's protest from February 3rd, 1947 to October 29th, 1947, was guilty of laches and had thereby lost the right to challenge the jurisdiction of the Emergency Court of Appeals.

Summary of Argument

It is argued that a Writ of Certiorari should issue because,

I. The extent of the jurisdiction of the Emergency Court of Appeals is an important question of Federal law, especially in view of the fact that as to matters arising prior to June 30, 1947, jurisdiction is exclusive and precludes relief from being sought in any other court;

II. If the court lacks jurisdiction in the case at bar, petitioner will have been subjected to a reduction in the rental value of its property without due process of law, without just compensation and without equal protection of the law, and the Housing and Rent Act of 1947 will be unconstitutional to the extent that it is based upon the rental value so determined—results which Congress could not have intended;

III. The delay by the Office of Temporary Controls and its successor the Housing Expediter from February

3, 1947 to October 29, 1947 in acting on petitioner's protest was an abuse of executive power and Congress could not have intended that § 1(b) of the Emergency Price Control Act be construed in such a manner as to make such abuse possible;

IV. By moving to dismiss the complaint the allegations therein are deemed to have been admitted and these allegations are such as should prompt this court ultimately to examine the autocratic manner in which the rent regulations were administered.

ARGUMENT

POINT I

The jurisdiction of the Emergency Court of Appeals in regard to proceedings which had their inception prior to the expiration of the Emergency Price Control Act of 1942 and which had not been concluded at the time when such Act expired presents an important question of Federal law that should be passed upon by this Court.

The Emergency Price Control Act of 1942 as amended, provided for a judicial review of administrative determinations, and for that purpose set up especially the Emergency Court of Appeals which was to have sole and exclusive jurisdiction of such matters. Section 204(d) of the statute provides (50 U. S. Code 924d):

> "* * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any

price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no Court, Federal, State or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

Thus the petitioner having been aggrieved by reduction in the rent, could proceed to obtain an administrative determination which was reviewable only in the Emergency Court of Appeals. In order that an aggrieved person would not be subjected to the injustice of being unable to obtain a final adjudication in a proceeding pending at the time the statute expired § 1 (b) of the Act especially provided (50 U. S. Code Sec. 901b):

"* * * as to * * * rights or liabilities incurred, prior to such termination date (June 30th, 1947) the provisions of this act and, such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability or offense".

The attempts of the Housing Expediter to limit this provision to suits, actions and prosecutions pending on June 30th, 1947, is not supported by the express wording of the Statute. The statute merely required that at the time of the expiration of the Statute, a right had accrued or a liability had been incurred such as would have sus-

tained a suit or action in due course if the statute had not expired.

Accordingly petitioner's status was within the contemplation of the statute. The Area Rent Director had issued an order on July 31st, 1946 reducing the maximum rent. The Regional Administrator on November 5th, 1946 denied petitioner's application for review. On February 3rd, 1947 petitioner filed a protest with the Office of Price Administrator (then represented by the Office of Temporary Controls) pursuant to the statute and pertinent regulations. The Housing Expediter delayed action on this protest until October 29th, 1947, when he pretended to deny it under authority contained in the Housing and Rent Act of 1947. Actually that Act contained no such authority and if the order of the Area Rent Director required approval of the Housing Expediter as successor to the Price Administrator such approval never became effective except by reason of the provisions of § 1 (b) of the Emergency Price Control Act of 1942 as amended and in the absence of such provisions the order of the Area Rent Director lost its vitality for lack of approval and hence should be deemed as having been reversed because having been challenged it was not approved before the expiration of the Statute.

So far as the regulations of rents were concerned, the functions of the Office of Price Administration were transferred to the Office of Temporary Controls by Executive Order 9809 dated December 12th, 1946 (11 F. R. 14281) and the functions of the Office of Temporary Controls were transferred to the Housing Expediter by Executive Order 9841 dated April 23rd, 1947 (12 F. R. 2645) which became effective May 4th, 1947. The Office of Housing Expediter was therefore in existence on June 30th, 1947 when the Price Control Act expired and as to matters arising before the expiration of the Act, the Housing Expediter derives his authority from § 1 (b) of

the Act and not from any new grant of power under the Housing and Rent Act of 1947.

The mere statement of the problem is sufficient to indicate the need of a clarification of the law by this Court.

This need is further emphasized by the case of *Fleming* v. *Hill,* Docket No. 437, now before this Court, where the Circuit Court of Appeals for the 10th Circuit found it necessary to certify questions to this Court as to the interpretation to be placed upon the statute, where such interpretation was much simpler than it has become since the expiration of the Act.

POINT II

If the Emergency Court of Appeals lacks jurisdiction to review the order of the Area Rent Director the Housing and Rent Act of 1947 is thereby rendered unconstitutional to the extent that it purports to fix a maximum rent for the accommodation described in the complaint, and such a purpose will not be attributed to Congress.

The order of the Area Rent Director dated July 31st, 1946, reducing the maximum rental and of the Regional Administrator dated November 5th, 1946, denying petitioner's application for review were both made prior to the expiration of the Emergency Price Control Act of 1942. Petitioner claims that the order of the Area Rent Director was unlawful and this defect was not cured by the order of the Regional Administrator. By reason of the provisions of Sec. 204(d) of the Statute, quoted under Point 1 (50 U. S. Code Sec. 924 (d)), the only manner in which the validity of these orders could be challenged was by an ultimate suit in the Emergency Court of Appeals.

On June 30th, 1947, the maximum rent being collected by petitioner was that fixed by the order of the Area Rent Director dated July 31st, 1946, which was $3.00 per month

less than the maximum rent originally attributed to the apartment. If, as claimed by petitioner, the order of the Area Rent Director was invalid, it follows that the maximum rent on June 30th 1947 was actually $35.00 instead of $32.00 per month.

Section 204 (b) of the Housing and Rent Act of 1947 (Public Law 129, 80th Congress, ch. 163) provides that "* * * no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergencvy Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947".

It will thus be seen that the maximum rentals fixed by the Housing and Rent Acts of 1947 are based upon the maximum rentals existing on June 30th, 1947. If a maximum rental existing on that date had in fact been determined by a method which lacked due process of law, such maximum rental was unlawful and any attempt to adopt it through the operation of the 1947 statute was also unlawful. That is to say the 1947 statute could only be given effect by imposing upon the petitioner a maximum rental which was unlawful.

In other words, the 1947 statute is applied through the adoption of a maximum rent challenged by petitioner, and which petitioner was never given an opportunity to have determined in a judicial proceeding.

In addition to lacking due process this situation also represents a taking of petitioner's property without just compensation through a reduction in maximum rental without a judicial determination of the validity of such reduction.

Furthermore, by depriving petitioner of a judicial review simply because of the fact that on June 30th, 1947, the Housing Expediter had not yet seen fit to pass upon

petitioner's protest, is a denial to petitioner of the equal protection of the law because there was ample time between February 3rd, 1947, and June 30th, 1947, for the Housing Expediter to pass upon the protest and petitioner was not accorded the same equality of treatment as was received by other protestants whose protests had been filed and acted upon during the administration of the Price Control Statute.

These several difficulties are avoided if as petitioner claims, so far as the case at bar is concerned, the Price Control statute continues in effect until the validity or invalidity of the order made by the Area Rent Director on July 31st, 1946, is ultimately determined by a proceeding under Sec. 204(a) of the Emergency Price Control Act of 1942 as amended (50 U. S. Code § 924a).

In conclusion it should be noted that the unconstitutionality of the statute as here urged is based upon an entirely different theory from that now before this court in the case of *Woods* v. *Miller*, Docket No. 486.

POINT III

The inordinate delay of the Office of Temporary Controls and also the Housing Expediter, in passing upon petitioner's protest should not be permitted to deprive petitioner of the rights it would have had beyond question if the protest had been acted upon within a reasonable time, and it is inconceivable that Congress expected § 1(b) of the Price Control Act so to be construed.

The order of the Area Rent Director about which the petitioner complains was made on July 31st, 1946 (R. 12, 24, 26) § 1300.209(b) of the Procedural Regulations (9 F. R. 7500), provided that applications for review of such an order by the Regional Administrator might be filed within ninety days. § 1300.209(a) of the same Regulations (9 F. R. 10484)

provided that an application for review must be filed "upon forms prescribed by Administrator and pursuant to instructions stated on such forms." In the instant case the Administrator supplied forms D-9, "Landlord's Application for Review of Rent Director's Determination" and the instructions on this form required it to be filed within sixty days. Fearful of taking any chances on this inconsistency between the Regulations and the forms supplied thereunder, petitioner actually filed an application for review on August 20th, 1946, or within three weeks after the making of the order.

The Regional Administrator took two and one-half months to pass upon the application and on November 5th, 1946, denied petitioner's application for review (R. /).

§ 1300.217 of the Procedural Regulations (9 F. R. 10484) provided that although the statute did not specify the time within which a protest could be filed, any protest not filed within ninety days would be regarded as a subject of unreasonable delay. Petitioner therefore filed its protest against the orders of the Area Rent Director and Regional Administrator by placing the same in the mail on February 1st 1947.

At that time the Office of Price Administrator had been succeeded by the Office of Temporary Controls and hence the protest was filed with the latter office. As stated above, on May 4th, 1947, the Office of Temporary Controls was succeeded by the Housing Expediter (12 F. R. 2645).

Since the Procedural Regulations had fixed ninety days as the limit of a reasonable time within which to file a protest, this same period must be deemed to have been a reasonable time within which successors to the Price Administrator should have acted upon petitioner's protest. The Housing Expediter should therefore have made a determination with respect to the protest not later than May 4th, 1947. Under the provision of § 204(a) of the statute petitioner would then have had thirty days in which to file

its complaint with the Emergency Court of Appeals (50 U. S. Code Sec. 924a), and the Housing Expediter would have had no pretense on which to argue that the Emergency Court of Appeals lacked jurisdiction by reason of the expiration of the statute.

The Housing Expediter however, instead of making his determination within the reasonable period of ninety days from the time when he received the protest, delayed doing so until the expiration of substantially ten months, that is to say more than three times what the Regulations define as a reasonable time.

It is therefore apparent that the Housing Expediter in moving to dismiss petitioner's complaint in the Emergency Court of Appeals on the ground that the expiration of the statute has deprived the court of jurisdiction is seeking to take advantage of his own delay and thus in effect endeavoring to profit by his own wrong.

It is submitted that Congress did not intend such a result and that the Housing Expediter should not be allowed to get away with it.

POINT IV

The Autocratic Administration of Rent Control.

Paragraph FIFTH (1) of the Complaint of the case at bar (R. 24) alleges that the Order of the Area Rent Director was made on a complaint which was insufficient for failure to comply with the regulations and if a proper complaint was actually filed no copy thereof was ever served upon petitioner. By moving to dismiss the complaint the Housing Expediter is deemed to have admitted the truth of these allegations.

Petitioner claims that by reason of these and other facts referred to in the complaint the order of the Area Rent Director was invalid.

Yet, if the decision of the Emergency Court of Appeals is allowed to stand, petitioner will have been deprived of an opportunity to have this invalidity determined in the manner obviously intended by Congress.

The order of the Area Rent Director was made July 31st, 1946, long before the expiration of the statute. As has been pointed out above, at that time the only redress of a person aggrieved by the administration of the statute was to request a review by the Regional Administrator followed by protest to the Price Administrator and having failed to obtain relief, sue in the Emergency Court of Appeals.

Thus the Housing Expediter is seeking to deprive petitioner of its right to review the conduct of his office and the real basis of his effort is his own delay in passing upon petitioner's protest filed in accordance with the provision of § 204(a) as amended (50 U. S. Code, Sec. 924a). of the Emergency Price Control Act of 1942.

For the Housing Expediter thus to attempt to protect the conduct of his office from judicial scrutiny is the quintessence of autocracy.

Conclusion

For the reasons stated in the petition and in this brief the application for a writ of certiorari should be granted.

Respectfully submitted,

AGNES SIKORA GILLIGAN
Counsel for Petitioner.

Appendix

EMERGENCY PRICE CONTROL ACT OF 1942 (as amended)

Section 1b (50 U. S. C. § 901b):

(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Section 204a (50 U. S. C. § 924a):

(a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have ex-

clusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: Provided, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

Section 204d (50 U. S. C. § 924d):

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended. The Supreme Court shall advance

on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisidiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provisions of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

HOUSING AND RENT ACT OF 1947

Section 204b (Public Law 129, 80th Session):

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: Provided, however, That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: And provided further, * * *.

Appendix.

Rent Regulations for New York City Defense-Rental Area

Section 5(c)3:

(c) Grounds for decrease of maximum rent. The Administration at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

* * * * *

(3) *Decrease in services, furniture, furnishings or equipment.* There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent.

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IN THE

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OCTOBER TERM, 1947

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Petitioner,

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

PETITIONER'S REPLY BRIEF

The plain language of Sec. 1(b) does not justify the narrow interpretation proposed by the respondent. In effect the respondent claims that the phrase "for the purpose of sustaining any proper suit" actually means any *pending* suit. If such was to have been the meaning of the statute the word "pending" would have been used in place of the word "proper". The requirement of the statute is that the right or liability be "incurred, prior to such termination date." It does not provide that the suit must be commenced prior to such date. When a right or liability has been incurred it will sustain a suit until such suit is barred by the pertinent regulation or other limitation. In the instant case the liability of the landlord to accept a reduced rental or become subject to the penal provisions of the statute and the right of the landlord to contest the validity of the order imposing such liability accrued on July 31st

1946, when the order of the Area Rent Director was made. Upon petitioner's challenging this order in the manner provided by the regulations, petitioner's right to do so continued until the issue was finally determined in the manner provided by the Emergency Price Control Act of 1942, and under the provisions of Sec. 1(b) all the pertinent sections of that act continue in existence until the issue is disposed of. For the respondent to urge that petitioner has not alleged any facts which would, if proved, establish the continuing jurisdiction of the Emergency Court of Appeals shows that the respondent is closing his eyes to the plain wording of the statute. It was not necessary as claimed by respondent that the right or liability be the subject of an action for damages or otherwise in progress on June 30th 1947.

Furthermore the respondent places too narrow a meaning on the word "suit". Webster's New International Dictionary defines "suit" as "the attempt to gain an end by legal process." Under modern conditions the pursuit of an administrative proceeding for the purpose of determining a controversy is as much a "suit" as is an action in a more traditional form of tribunal. It is on such a basis that the courts require exhaustion of administrative remedies. When petitioner asked that the order of the Area Rent Director be reviewed and upon such application being denied, filed a protest with the Administrator, petitioner was attempting to gain an end by legal process. Hence even from the point of view of the respondent's argument a suit was pending on the termination date of the statute.

The very act of the Housing Expediter in denying petitioner's protest could only be justified on the continuing applicability of the Emergency Price Control Act. Otherwise the Housing Expediter had no authority to deny or act upon the protest in any manner whatsoever.

The respondent's argument that the Housing and Rent Act of 1947 does not mention the Emergency Court of Ap-

peals and does not vest in that court any jurisdiction whatsoever, is entirely beside the point. Petitioner claims that the jurisdiction of that court arises from a right and liability incurred prior to the termination date and inasmuch as such right and liability was sufficient to sustain a suit before June 30th, 1947, it was necessarily sufficient thereafter. The same comment applies to the quotations from the reports by the Committees of Congress. They contain no suggestion that rights incurred prior to June 30th, 1947, were to be obliterated if no suit based thereon had been commenced by that date.

As to respondents effort to dispose of petitioner's contention that so far as the maximum rental in the instant case is concerned, the Housing and Rent Act of 1947 is unconstitutional unless the Emergency Court of Appeals has jurisdiction to determine the lawful rent payable on June 30th, 1947, it should be noted that the Emergency Court of Appeals itself in a foot note to its opinion in *Talbot* v. *Woods,* 164 F. 2nd 493-495, expressly refers to the question whether Congress has constitutional power to prescribe a maximum rent which has not been the subject of judicial determination.

Indeed, the foot note to the opinion of the Emergency Court of Appeals in the *Talbot* case above mentioned shows how badly needed is a clarification by this court as to the meaning of the Statute.

As pointed out in petitioner's main brief, this clarification is so seriously needed that in *Fleming* v. *Hill,* now before this Court as Docket No. 437, the Circuit Court of Appeals for the 10th Circuit itself certified to this Court several questions arising under the statute.

Dated, Astoria, New York, March 4th, 1948.

Respectfully submitted,

AGNES SIKORA GILLIGAN,
Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 563

SIKORA REALTY CORPORATION

v.

TIGHE E. WOODS, HOUSING EXPEDITER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The United States Emergency Court of Appeals rendered no opinion (R. 12).

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on January 2, 1948 (R. 12). The petition for a writ of certiorari was filed on January 30, 1948. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, making applicable Section 240 of the Judicial Code, as amended.

QUESTION PRESENTED

Whether the Emergency Court of Appeals continues to have jurisdiction since the termination of the Emergency Price Control Act on June 30, 1947, to determine the validity of a rent order issued under that Act, where such order is not involved in any "suit, action, or prosecution" based on "rights or liabilities incurred, prior to such termination date," within the meaning of Section 1 (b) of the said Act, *infra,* p. 8.

STATUTES INVOLVED

The pertinent parts of the statutes involved are set forth in the Appendix, *infra,* pp. 8–11.

STATEMENT

On November 28, 1947, the petitioner herein filed with the Emergency Court of Appeals a complaint requesting that that court declare invalid an order issued by the Rent Director for the New York City Defense-Rental Area on July 31, 1946, which established the maximum rent for petitioner's housing accommodations (R. 1–7). Respondent moved the court to dismiss the complaint on the grounds that as to the period prior to June 30, 1947, the court's jurisdiction had expired with the termination of the Emergency Price Control Act and had not been preserved by Section 1 (b) thereof, *infra,* p. 8, since it did not appear that there was pending or imminent any suit or prosecution or proceeding within the contemplation of that section; and that with

respect to the period commencing on July 1, 1947, the Emergency Court of Appeals had been granted no jurisdiction by the Housing and Rent Act of 1947 to pass on the validity of regulations and orders issued under it (R. 7–9). Respondent's motion was granted by the Emergency Court and the complaint was dismissed (R. 12).

ARGUMENT

1. Petitioner urges that the Emergency Court of Appeals has jurisdiction to determine the validity of a maximum rent order issued prior to July 1, 1947, although it has failed to show that it incurred any rights or liabilities under the order while it was currently in force and effect which may still be litigated. It is plain that the Emergency Court of Appeals was created for the sole purpose of carrying out the purposes of the Emergency Price Control Act, and that in the absence of other legislation continuing its jurisdiction the termination of that Act left that court with only those residual powers saved to it by Section 1 (b) of the Act itself, *infra*, p. 8. Under Section 1 (b) the powers of that court continue only "for the purpose of sustaining any proper suit, action, or prosecution" with respect to "rights or liabilities incurred," or "offenses committed" prior to June 30, 1947. The Emergency Court of Appeals has stated that these are the basic requirements for the continuation of its jurisdiction in both price and rent cases. See *Standard Kosher Poultry, Inc.* v. *Clark*, 163 F. 2d

430; *Talbot* v. *Woods,* 164 F. 2d 493; *Cf. 150 East 47th Street Corp.* v. *Porter,* 156 F. 2d 541. Petitioner has not, in the instant case, alleged any facts which would, if proved, establish that the continuing jurisdiction of the Emergency Court was necessary "for the purpose of sustaining any proper suit, action, or prosecution" pending or imminent at the time the complaint was filed in that court. The case at bar is thus distinguishable from *Woods* v. *Hills,* No. 437, this Term, recently argued and now pending decision. In the latter case a liability incurred during the life of the Emergency Price Control Act was being asserted against the landlord in a suit brought to recover treble damages, which was pending on appeal on the date the Act expired. In the instant case the proceeding in the Emergency Court was based on the Administrator's denial of a protest on the ground that the Act had expired, not on a right or liability being asserted in a suit for damages and therefore still current. Since the rent order involved here was not currently in force under the Emergency Price Control Act when the complaint was filed in the Emergency Court, and since the complaint fails to show that a right or liability incurred under that Act or a regulation or order duly promulgated thereunder was involved within the contemplation of Section 1 (b), the Emergency Court has no jurisdiction to pass upon the validity of the rent order, either under Section 204 (a) or Section 204 (e).

Respondent's authority to administer rent control for the period subsequent to June 30, 1947, is derived solely from the Housing and Rent Act of 1947, Section 203 (a) of that Act, *infra*, p. 9, specifically forbidding the establishment or maintenance of any maximum rent after that date under the authority of the Emergency Price Control Act of 1942, as amended. The Housing and Rent Act of 1947 does not mention the Emergency Court of Appeals and does not vest in that court any jurisdiction whatsoever. The legislative history of that Act, however, makes it clear that the failure to mention the Emergency Court was not an oversight, but was the result of a deliberate intention on the part of the Congress to withhold from that court all jurisdiction under the new rent legislation. In the report to accompany the bill (H. R. 3203) which later became the Housing and Rent Act of 1947, the Committee on Banking and Currency of the House of Representatives stated unequivocally that the committee did not deem it necessary to continue an extraordinary court such as existed under the Emergency Price Control Act, meaning, of course, the Emergency Court of Appeals. H. Rept. No. 317, 80th Cong., 1st Sess.[1] In the face of the committee's plain

[1] At p. 13 of that report, the committee said: "In view of the fact that it is nearly 2 years since VJ-day, and that sugar, rice, and rents are now the only elements of our economy regulated as to the maximum prices, the committee does not deem it necessary to continue an extraordinary court or elaborate wartime system of procedure and review, such as exists

statement showing a contrary intention, it would be unreasonable to imply that the exclusive jurisdiction granted to the Emergency Court by Section 204 (d) of the Emergency Price Control Act, *infra,* pp. 8–9, was extended to the Housing and Rent Act of 1947. See *Talbot* v. *Woods, supra,* fn. p. 495.

2. Petitioner contends that the Housing and Rent Act of 1947 is unconstitutional unless the Emergency Court of Appeals has jurisdiction to determine the validity of the rent order issued by the Rent Director in 1946 under the authority of the Emergency Price Control Act of 1942. This contention is apparently made on the supposition that no means are available under the 1947 Act for having the validity of maximum rents established under that Act judicially determined. Apart from the fact that the court below had no opportunity to pass upon this question, which should preclude petitioner from advancing it now for the first time in this Court, it

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under the Emergency Price Control Act of 1942, as amended. The need for such extraordinary measure is inconsistent with the requirements of this stage of the transition period. Therefore, all litigation under this title will be adjudicated in the courts which historically have had such jurisdiction. Contrary to the view held by a few of the witnesses that such action will result in enforcement chaos, the committee, which recognized the wisdom and need for such extraordinary measures in 1942 when we were in a critical period of war, is of the belief that the courts of this Nation can and will adequately handle the litigation involved in the regulation of rents."

See also the Minority Views, at page 40 of the report.

is clear that the courts which are given general jurisdiction by Sections 205 and 206 of the 1947 Act, *infra*, pp. 9–11, are competent to pass upon the validity of maximum rents established under that Act, in proper cases brought before them.[2] See fn. 1, *supra*, p. 5. Thus, petitioner's allusion to a lack of due process of law (Pet. 14) is without substance.

CONCLUSION

The decision of the court below is correct, and does not warrant further review. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
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ED DUPREE,
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Chief, Appeals Section,
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Office of the Housing Expediter.

MARCH 1948.

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[2] If any attempt is made to impose liability upon petitioner for violations occurring before the expiration of the Emergency Price Control Act, petitioner's remedy would be in the Emergency Court. See p. 4, *supra*.

APPENDIX

1. The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664; 50 U. S. C. App., Secs. 901 et seq.), are as follows:

> SECTION 1. (b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incured, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.
>
> SECTION 204. (d) * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this sec-

tion, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

2. The pertinent provisions of the Housing and Rent Act of 1947, approved June 30, 1947 (Pub. Law 129, 80th Cong., 1st Sess.), are as follows:

SECTION 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither will-

ful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order en-

forcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 563

SIKORA REALTY CORPORATION,

Petitioner,

against

TIGHE E. WOODS, Housing Expediter, as Successor to the Price Administrator,

Respondent.

PETITION FOR REHEARING

To the Honorable FRED M. VINSON, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner respectfully requests that the time within which petitioner may move for a rehearing be extended and that reconsideration be given its petition for a writ of certiorari to the United States Emergency Court of Appeals which this Court denied on March 15, 1948.

Preliminary Statement

The decision which petitioner seeks to have reviewed involves the construction placed upon § 1(b) of the Emer-

gency Price Control Act of 1942 as amended whereby

> "* * * as to * * * rights or liabilities incurred, prior to such termination date (June 30th, 1947) the provisions of this act and, such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability or offense."

The Area Rent Director on July 31, 1946 made an order reducing the maximum rent for an apartment in petitioner's house. A timely application for review was filed with the Regional Administrator who denied the application on November 5, 1946, following which the petitioner duly filed a protest on February 3, 1947 with the Office of Temporary Controls, as successor to the Office of Price Administration. This protest was not acted upon by the Housing Expediter as successor to the Office of Temporary Controls until October 29, 1947, when the protest was denied. Petitioner then duly filed a complaint with the Emergency Court of Appeals but this complaint was dismissed on the ground that through the expiration of the Act the Court had lost jurisdiction.

Petitioner applied to this Court for a writ of certiorari on the ground that § 1(b) of the Emergency Price Control Act as amended, clearly provided for continuing jurisdiction of the Emergency Court of Appeals until the legality of a rent order made prior to June 30, 1947 had been finally determined, and upon the further ground that unless the statute were so construed the Housing and Rent Act of 1947 would be rendered unconstitutional as depriving petitioner of its right to a review of an administrative order.

Reasons for Requesting Rehearing

(1) A rehearing is requested because this Court in the opinion of *Woods* v. *Hills,* Docket No. 437, decided May 10, 1948, expressly states that the review of a rent order by the Emergency Court of Appeals under Sec. 204(a) of the Emergency Price Control Act was *still* available after the attempted modification of § 204(e) by the Supplemental Appropriation Act of 1948, approved July 30, 1947;

(2) In the same opinion this Court expressly indicated that an elimination of all provisions for review by the Emergency Court of Appeals of a rent order made prior to June 30, 1947, would be a denial of due process.

1. The continuing jurisdiction of the Emergency Court of Appeals.

In *Woods* v. *Hills* (*supra*), this Court said concerning the continuing jurisdiction of the Emergency Court of Appeals with respect to a rent order made prior to June 30, 1947, at page 6 of the official print, Mr. Chief Justice Vinson delivering the opinion of the entire Court:

> "However, the 1947 amendment left unimpaired the provision in § 203(a) for review of rent orders by filing protests with the Administrator (*i. e.,* the Housing Expediter, as transferee of the Administrator's rent control functions). A denial of such a protest *may be reviewed* in the Emergency Court of Appeals by filing a complaint pursuant to § 204(a). * * * (Italics supplied.)
>
> "Thus, it appears that the Emergency Court of Appeals *may still be able to acquire jurisdiction* to review rent orders, issued under the Price Control Act, by means of the protest and complaint procedure of §§ 203(a) and 204(a). (Italics supplied.)

And at page 7:

> "* * * That statutory review procedure, whose constitutionality was upheld in the *Yakus* case, is *still preserved* to defendants charged with violations of rent orders issued under the Emergency Price Control Act of 1942. If anything, *the judicial review still available* to such defendants is even broader than the procedure sustained in the *Yakus* case, since the sixty-day limitation on the filing of protests no longer applies to rent orders." (Italics supplied.)

It thus clearly appears that this Court has adopted the contention of this petitioner that under the provisions of § 1(b) of the Emergency Price Control Act, the jurisdiction of the Emergency Court of Appeals respecting a rent order made prior to June 30, 1947 continues until the validity of the order has been finally determined.

Unless petitioner's application for a writ of certiorari is granted the decision of this Court in denying it will be directly inconsistent with the recent opinion of this Court in the case of *Woods* v. *Hills*.

2. The denial of due process.

§ 204(b) of the Housing and Rent Act of 1947 fixes as maximum rental the rental in effect on June 30th, 1947. In the instant case the Area Rent Director had by order dated July 31st, 1946 reduced a maximum rental. Petitioner challenged the validity of this order, and the validity of the rental which was in effect on June 30th, 1947 has never been determined because the Emergency Court of Appeals held that its jurisdiction ceased when the Emergency Price Control Act of 1942 expired. Petitioner claims that such a construction of §1(b) of the Price Control Statute renders § 204(b) of the Housing and Rent Act of 1947 unconstitutional so far as the instant case is con-

cerned because otherwise Congress is deemed to have adopted a maximum rent as to which petitioner has never been accorded an opportunity of review and as to which petitioner has therefore been denied due process.

In *Woods* v. *Hills,* this court held that an attempted amendment to § 204(e) of the Price Control Act, contained in the Supplemental Appropriation Act, approved July 30th, 1947, was ineffectual because of an obvious error which it contained. § 204(e) as so attempted to be amended contained a provision for obtaining a review of a rent order claimed to be invalid. In discussing the effect of a situation in which the aggrieved party was thus denied a means of reviewing an alleged invalid rent order, this court said at page 6 of its opinion (official print):

> "* * * if elimination of the complaint procedure of § 204 (e) as a remedy for those seeking to challenge rent orders meant the elimination of all provision for review by the Emergency Court of Appeals, it might be argued that preservation of the ban imposed by § 204 (d) on district court adjudication of the validity of rent orders would be a denial of due process to a defendant charged with a violation of an order."

It is submitted that the argument made under Point II of the brief supporting petitioner's application for a writ of certiorari is substantially the same as expressed by this court in the foregoing quotation, and if the suggestion made in the foregoing quotation is correct, a writ of certiorari should be granted for the purpose of correcting an injustice done to petitioner by a decision of the Emergency Court of Appeals.

Conclusion

There is thus presented a conflict between the law as expounded by this Court in the opinion of *Woods* v. *Hills*, Docket 437, and the law as applied by this Court in denying petitioner's application for the writ of certiorari prayed for.

Wherefore petitioner respectfully urges that the time within which to apply for a rehearing be extended, that a rehearing of the petition be granted, and that upon further consideration the order of March 15th, 1948 denying the application for a writ of certiorari be revoked, that a writ of certiorari issue, and that petitioner be afforded such other, further and different relief as to this Court may seem just.

Respectfully submitted,

AGNES SIKORA GILLIGAN,
Counsel for Petitioner,
Sikora Realty Corporation.

Certificate

I, AGNES SIKORA GILLIGAN, counsel for the above named petitioner, Sikora Realty Corporation, do hereby certify that the foregoing petition for an extension of time within which to apply for a rehearing, and for a rehearing of this case is presented in good faith and not for delay and is restricted to the grounds specified in subdivision 2 of Rule 33 of this Court as amended.

AGNES SIKORA GILLIGAN,
Counsel.